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No. 06-1609

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

JONATHAN HAKALA,

Petitioner,

v.

J.P. MORGAN SECURITIES INC.,

Respondent.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Second Circuit

REPLY TO BRIEF IN OPPOSITION

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Petitioner Jonathan Hakala ("Petitioner") respectfully files this Reply to the J.P. Morgan Securities, Inc. ("Respondent") Brief in Opposition ("BIO").

The BIO cited *Walker v. Armco Steel Corp.*, 446 U.S. 740 to assert that timeliness of an action brought in federal court pursuant to diversity jurisdiction is determined by the statute of limitations set forth in state rules. See, BIO at 1. What this Court actually said was, "except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any diversity case is the law of the State". *Id.*, at 745. Since the Federal Arbitration Act ("FAA") is an Act of Congress, Respondent's argument does not apply to the FAA.

This Court weighed an argument similar to Respondent's in *Prima Paint v. Flood & Conklin*, 388 U.S. 395, 404 (1967): "The point is made that ... federal courts are bound in diversity cases to follow state rules ...". This Court rejected that argument as it pertained to the FAA, noting:

> "Congress may prescribe how federal courts are to conduct themselves with respect to subject matter over which Congress plainly has power to legislate. ... And it is clear beyond dispute that the federal arbitration statute is based upon and confined to the incontestable federal foundations of "control over interstate commerce and over admiralty" [citation omitted]." *Id.*, at 405.

In *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 271 (1995), this Court referred to *Prima Paint* when it explicitly ruled that "the Federal Arbitration Act ... applied in diversity cases because Congress had so intended".

The FAA applies to the instant matter, because just as in *Allied-Bruce Terminix*, *supra*, at 282, "[t]he parties do not contest that the transaction in this case, in fact, involved interstate commerce". In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001), this Court ruled that "Section 1 exempts from the FAA only contracts of employment of transportation workers". Petitioner's employment contract with Respondent falls under the FAA because it remains an

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undisputed fact that he was never a transportation worker.

In *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 197 (2000), this Court noted that under "Section 9 of the FAA ... within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award ...". "Within one year" has been ruled to be a statute of limitations by the Second and Eighth Circuits. See, *Photopaint Technologies, LLC v. Smartlens Corp.*, 335 F. 3d 152, 158 (CA2 2003) ("section 9 of the FAA imposes a one-year statute of limitations on the filing of a motion to confirm"), and *RGA Reinsurance Co. v. Ulico Cas. Co.*, 355 F. 3d 1136, 1139 (CA8 2004) ("A party seeking confirmation of an arbitration must file a petition to confirm within one year after the award."). If a federal statute of limitations governs filings to confirm, then consistency and logic suggest a federal statute of limitations should also govern filings to vacate, and in fact, several Circuits have used the three-month period referred to in § 12 of the FAA as the statute of limitations for filings to vacate. See, Pet. for Writ of Cert. at 3.

In *DelCostello v. Teamsters*, 462 U.S. 151, 166 fn. 15 (1983), this Court found regarding state statutes of limitations for vacating arbitration awards, "[t]he remainder of the States either impose time limits based on terms of court or have no statutory provision on point". The fact some states "have no statutory provision" is yet another powerful reason not to borrow state statutes for the FAA. Some states may have felt no need to enact a separate state statute because there was already a three-month period mentioned in § 12 of the FAA.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: July 14, 2007